IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 633 OF 1993.

1. MOTOR CYCLE HOUSE AND METRO COTTAGE INDUSTRIES, a Partnership Firm at 13, Kasba Peth, Pune - 411 011.

2. SHRI RAJNIKANT TARACHAND DAMANI, Adult, Occupation business, residing at 13, Kasba Peth, Pune - 411 011.

..Petitioners (Ori. Defndt. Nos.1 & 2)

Versus

1. SMT. KAMALABAI DATTATRAYA KALE, Age about 55 years, Occ. Household,
2. SHRI MAHESHWAR DATTATRAYA KALE, Age about 34 years, Occ. Business,
3. SHRI MADHUKAR DATTATRAYA KALE, Age about 28 years, Occ. Business,

All residing at 619, Sadashiv Peth, Pune - 411 030.

4. SHRI NAROTTAMDAS VELJI HINDOCHA, Adult, Occupation Business, Residing at 13, Kasba Peth, Pune - 411 011.

..Respondents (1 to 3 Ori. Pltffs.1 to 3)

Mr. P.K. Hushing for the petitioners.

Mr. V.B. Majumdar for the respondent Nos.1 to 3.

CORAM: ANOOP V. MOHTA, J.

DATED: 28TH JUNE, 2005

ORAL JUDGMENT. :

1. Landlord-respondent Nos.1 to 3 are in need of the additional premises owned by them which has been let out to the petitioner-original plaintiff. Therefore, a Petition filed in the Small Causes Court of Pune on 18th October, 1985, after giving due notice dated 8th May, 1984, and demanded the possession on the ground of arrears of rent and bonafide need, as contemplated under Section 13(1)(a)(g) of the Bombay Hotel Rents, Hotel & Lodging House Rates (Control) Act, 1947 (for short "The Bombay Rent Act").

2. The petitioner-tenant resisted the same by Written Statement dated 26th August, 1986. The evidence was led by the parties viz. PW1 Madhukar Dattatraya Kale, PW2 Maheshwar Dattatraya Kale, PW3 Shrikant Laxman Gosavi, PW4 Nitin Prabhakar Gujar and one Mr. Rajnikant Damani DW1. The learned Judge, after considering the material, as well as, the evidence led by the parties on the record, granted the decree of possession. The Appellate Court, on the Appeal filed by the petitioner, by judgment dated 9th December, 1992, confirmed the same on both the counts.

3. Heard the learned counsel for the parties and with their assistance, gone through the respective evidence and reasoning given by the Courts below. Both the Courts below held that the monthly standard rent was Rs.250/- + Rs.42.50 tax; petitioner-defendant was in arrears of rent and taxes for the period from 1st January 1980 to 30th July 1988, and, therefore, they were defaulters; the respondent landlords requires the Suit premises reasonably and bonafide for their own use and occupation for the business purpose; that greater hardship would be caused to the landlord if eviction, as sought, not granted and, therefore, awarded the decree for possession in question.

4. The learned counsel Mr. Hushing, appearing for the petitioner, by referring to Section 106 of the Transfer of Property Act submitted that the tenancy in question is yearly as the premises has been let out for manufacturing purpose, even though they were paying the rent monthly alongwith the cess. Both the Courts below, after considering the evidence led by the parties, have not accepted the said submission. There is nothing on the record, except the oral evidence by the tenant-petitioner, to suggest that the tenancy was yearly. On the contrary, there is a sufficient evidence

and a admission on the record to suggest that the tenancy was monthly, basically through DW1 Rajnikant when, in his cross-examination, he admitted that the demand made in the Suit Notice towards arrears of rent and tax etc. was correct. He further admitted that he paid the rent regularly every month. There is no dispute regarding the demand made in the Suit premises. Merely because there were no regular rent receipts issued, that itself cannot be a ground to accept the contention of the learned counsel appearing for the petitioner that the tenancy was yearly and but the rent was paid monthly, specially when admittedly the rent was paid monthly without any demur or objection. The parties can enter into any agreement even to pay the rent monthly for the premises, even though it is for non-residential purpose or used for manufacturing purpose as contemplated under Section 106 of the Transfer of Property Act. In absence of any material to support the same, the concurrent finding given by the Court below in this regard need no interference.

5. The issue regarding arrears of rent is duly considered, based on the evidence led by the parties. There is no dispute about the issuance of notice or to its validity. There is no dispute about the receipt of the due notice by the petitioner and the demand made in

the said Notice. The only defence was that no due receipts were issued or passed by the landlord. There is no further dispute that the rent was not paid regularly. Therefore, the finding given by the Courts below need no further discussion on this issue.

6. Respondents-landlords, being the owner of the premises, are the best Judge to select, demand and claim possession of the premises for the bonafide use and occupation. In the present case admittedly, the premises in question is admeasuring 15’ X 6’ and situated at 170, Budhwar Peth, Pune - 30. The respondent-landlord at present is doing business in the premises which is admeasuring 15’ X 10’. In view of the growing business, desire to have additional and/or larger premises for the business by the landlord-respondent is quite natural. Therefore, on this foundation, if landlord file an application for possession of the premises and if it is supported by the evidence and material on the record which justifies the demand and claim for the purpose, I see there is no reason to discard such claim made by the landlord-respondent. As noted, there are as many as four witnesses to support the case of the landlord-respondent in all aspects.

7. The learned counsel appearing for the landlord- respondent has relied on [(2001) S.C.C., 679] **Ragavendra Kumar Vs. Firm Prem Machinery & Co.** in support of his submission and also in support of the reasoning given by the Court below, whereby, after considering the bonafide need of the landlord-respondent, the Courts below has granted the decree of possession. The principles, as laid down need no discussion, but it can be crystallized as follows: (a) The landlord is the best Judge of his own requirement for residential or business purposes and has complete freedom in the matter. (b) Unless proved otherwise, the reasonable and bonafide need of the landlord, if supported by material evidence on the record, has to be respected. (c) Even if some premises owned by the said landlord is available, but occupied by other tenants, in such circumstances also, ownership of the other premises, that itself cannot be the reason to discard the present need of the landlord, specially when it is proved that the premises in question is needed at the relevant time of filing of the Petition. (d) It is true that the bonafide need or genuine need of the landlord must not be a farce and/or a just cause to evict the tenant for other ulterior purpose. In the present case, as noted above, there is nothing on the record to suggest that the need of the landlord is not reasonable

or bonafide or it is for any ulterior motive.

8. Both the Courts have also rightly taken note of shifting of the burden on the defendant-tenant to show that the defendant-tenant would suffer hardship, if the eviction decree is passed. I am of the view that once the landlord has placed on the record, material evidence to support his bonafide and reasonable need and once it is proved, in such circumstances, the question of hardship normally tilts in favour of the landlord. In the present case, both the Courts below have rightly come to this conclusion that the hardship would caused to the landlords if the eviction decree is not passed.

11. I am of the view that both the Courts below granted the decree of possession rightly based on the material and the evidence led by the parties. The view, therefore, cannot be said to be unreasonable or perverse. The view is plausible based on the documents and material on the record. If it is within the framework of law, as well as, the facts of the record, and knowing fully the basic ingredients of Article 227 of the Constitution of India, I am not inclined to interfere with the concurrent finding given by the Courts below.

12. For the above reason, the present Petition is dismissed. Rule is discharged and interim order is vacated. However, time to vacate the premises is granted for a period of six months on a condition that the petitioner-tenant and all family members shall file usual undertaking within four weeks, failing which, the respondent-landlord are free to execute the decree in accordance with law.

13. There shall be no order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]